278. And he does not, by virtue merely of privity of estate as assignee, become liable. There must be an election, actual or implied. *Goodwin* v. *Noble* (1857), 2 El. & Bl. 587; *Pratt* v. *Levan* (1827), 1 Miles (Pa.) 358; *Horwitz* v. *Davis* (1860), 16 Md. 313, and cases cited supra. Following the decisions of the English courts in the construction of their statute, American courts have deemed the lessor to be a creditor to the extent of his injury for the loss of his lease, and to such extent have justly allowed him to recover prospective damages. *People* v. *St. Nicholas Bank* (1897), 151 N. Y. 592, 45 N. E. 1129; *Sweatman's Appeal* (1892), 150 Pa. S. 369, 24 At. Rep. 617; *Underhill* v. *Collins* (1892), 132 N. Y. 269, 30 N. E. 576. And this is undoubtedly the rule favored by the court in the principal case, judging from its intimation.

LIMITATION OF ACTIONS—MORTGAGES.—A security deed was given to secure a debt, but the deed did not refer to the debt or furnish any evidence of its existence. The statute of limitations had run against the debt but had not run against the equitable mortgage. In an action to foreclose and to obtain a money judgment, *Held*, that the bar to the obligation, secured by the deed, was a bar to the action on the deed. *Duke* v. *Story* (1902), — Ga. —, 42 S. E. Rep. 722.

The general rule is that the mortgage security is not extinguished by reason of the fact that the debt secured by the mortgage is barred by the statute of limitations. This rule has been adopted by the courts or by statutes in most of the states. Several states, however, have adopted the contrary rule, holding that an action on the mortgage is barred when an action on the debt would be. This is so in Arkansas, Mississippi and Missouri by express statutory provision and in California, Illinois, Indiana, Iowa, Kansas, Kentucky and Texas by judicial decisions. Supporting the general rule, see *Bank of Metropolis* v. *Guttschlik*, 39 U. S. 14 Pet. 19; *Borst* v. *Corey*, 15 N. Y. 505; *Norton* v. *Palmer*, 142 Mass. 433; contra, *Harris* v. *Mills*, 28 Ill. 44, 81 Am. Dec. 259; *McCarthy* v. *White*, 21 Cal. 495, 82 Am. Dec. 754; see especially note to *Kulp* v. *Kulp*, 51 Kan. 341 in 21 L. R. A 550; JONES, MORTGAGES, Secs. 1204-1207; WOOD, LIMITATIONS, sec. 234. The Georgia court has generally held in conformity with the general rule as given above: *Elkins* v. *Edwards*, 8 Ga. 325; but in the principal case, the court, following *Story* v. *Davis*, 110 Ga. 65, 35 S. E. 314, distinguishes between a deed absolute on its face, containing no reference to the debt, and a mortgage, which specifies the obligation secured. This distinction is based on the ground that where a mortgage is given, the creditor contracts that there shall be two remedies against the debtor to enforce payment, while in the security deed there is no such contract expressed. It would seem that any consideration that would lead the court to the conclusion that a deed absolute on its face is in fact an equitable mortgage, would be of equal weight in establishing an implied contract for a double remedy.

MALICIOUS PROSECUTION—ABUSE OF PROCESS—SENDING CLAIM TO ANOTHER STATE FOR COLLECTION TO AVOID LOCAL EXEMPTIONS.—Defendant who honestly believed he had a claim against the plaintiff, assigned it to another for the purpose of having it sent for collection, by garnishment, into another state, in order to avoid the local exemption law. The garnishment proceeding proved unsuccessful. In an action for malicious prosecution and abuse of process, *Held*, that these facts did not show a cause of action. *Leeman* v. *McGrath* (1902), — Wis. —, 92 N. W. Rep. 425.

"In the absence of some statutory prohibition," said the court, "or the express inhibition of a court of equity, the defendant had a legal right to